

To R. G. PAYNE, *Chairman of the*

Senate's Committee on the Usury Law:

I received your letter, asking my opinion of the proposed modification of the Usury Law.

The law declares that no person shall receive by way of compensation for the use of money, more than six dollars for the use of one hundred dollars for one year. It also declares that all sums over six per cent. shall be avoided on the plea of the defendant, and if it be received, the receiver shall be subject to indictment and fine.

The measure now proposed declares that the lender shall be authorized by written contract to receive any sum not exceeding ten dollars, for the use of one hundred dollars for one year, leaving the law fixing six per cent. to stand as the established rate, in all cases where there is no contract.

It may be supposed that this proposed law is incompatible with the 6th section of the 11th art. of the Constitution, declaring, "that the Legislature shall fix the rate of interest, and the rate so established shall be equal and uniform throughout the State." I shall proceed to show that it is not.

CONSTITUTIONAL PROVISION ON THE SUBJECT OF INTEREST.

[This bill proposes a rate of interest, and the rate is uniform.

In the numerous class of cases constantly occurring, where the parties have made no contract as to the rate of interest or measure of damages for the detention of debt, it is imperative, necessary, and proper, that the Legislature should fix the rate of interest or measure of damages; and that the rate should be equal and uniform throughout the State; that is, it should be the same in every county and city in the State, and should be the same in every case occurring in any of the courts, and thus settle with uniformity the rights and liabilities of the parties. So, also, after judgments and decrees are rendered, the established rule should operate in conformity with the Constitution, uniformly in every case in all the courts of the State. If this were not so, the established rate would not be equal, impartial, or uniform. If the Legislature were to undertake to declare that all the banks in the State, or any one of them, should be entitled to charge and receive ten per cent. interest for the loan of money, whilst all the citizens of the State are liable to indictment and fine for taking more than six per cent., there would be no uni-

formity in the operation of this law, and there would be a clear and manifest breach of the constitutional mandate to the Legislature; for the banks would then be specially exempted from the established rate. It was an exemption of this description in the charters of the Union and Planters' Banks, that caused the insertion of the 6th sec. of the 11th art. in the Constitution. So if the Legislature should undertake to authorize guardians to loan the money of their wards or widows, or soldiers of the revolution, or any person or persons mentioned by name, to loan money at ten per cent., and at the same time to subject all other persons to punishment, if they presumed to loan money for more than the established rate of six per cent., there would be no equality, no uniformity throughout the State. Such a law would create exceptions to the established rate; it would create special privileges. Although in the given instances, it might be considered that public policy was promoted, or meritorious persons or classes rewarded by these special exemptions and privileges; it would be, nevertheless, a subversion of the equality and uniformity of the law establishing the rate of interest. If the power to pass such laws existed in the General Assembly, and it were freely exercised, it is easy to see that there could be established the most unjust and odious distinctions amongst the people of the State. We could no longer boast that this was a government of equal laws.

So, if the Legislature should undertake to declare by enactment, that in all cases occurring in Davidson, Shelby, or Knox counties, in the absence of special contract, or where contracts were made, ten per cent. should be lawful interest, whilst all contracts made in every other county in the State, or where no contracts were made, the established rate should be six per cent., there would be no uniformity in the operation of such a law; no more than there would be if the State taxes on the same amount of property were double in one county what they were in another. Certain citizens of New York city memorialized the Legislature of that State to establish the validity of contracts for ten per cent., made by the inhabitants of the county in which the city of New York is situated, whilst the established rate throughout the rest of the State was seven per cent. The most unjust and injurious distinctions could be established between the different sections and counties of the State by the exercise of such legislative power.

In my judgment, all such legislation is prohibited by the Constitution; but it may be insisted that this mandatory provision of the Constitution not only makes it the duty of that body to establish what shall be paid for the use of money, or damages for its detention, operating equally and uniformly throughout the State in all those cases *where the parties are silent and law speaks*, but that it goes a step farther and makes it the duty of the Legislature to make the law speak and to annul the contracts of the parties and in effect to es-

establish a thorough uniformity in all the contracts that may be made touching the rate of interest or measure of damages for the detention of debt. *This construction of the Constitution extends the mandate of that instrument beyond what its terms fairly and necessarily import.* The provision in the Constitution commands equality of right and uniformity of law. It prohibits the grant of special privileges or the imposition of unequal burdens. The establishment of a uniform rate does not exclude necessarily all liberty of contracting; nor does liberty of contracting exclude equality and uniformity of law. The Legislature is not bound to establish a rate which shall override all contracts. Such a construction of the Constitution has been adopted in the popular mind to some extent from the practice of the Legislatures of the several States, rather than from the just and necessary effect of the words of the Constitution. When this amendment was proposed to the Constitution, the law establishing a maximum of six per cent. stood as it now does, open to contract under six per cent. Does this mandate declare that the Legislature shall so frame the law that the subject of interest or the value of money should not be open to contract to any extent whatever? No such conclusion is fairly deducible from the words used; nor has the subject at any time in the last three centuries, in any country, been otherwise than open to contract to some extent. The statute of Tennessee has declared at all times, that no person shall charge and receive more than six per cent. per annum. It established a maximum rate above which no citizen could charge; the rate of interest is therefore open to contract below six per cent., and has at all times been open to contract below that sum. Competition in the business of loaning might reduce the market value of money below the statutory rate at times in this country, as it has done in other countries. Can it then be said that the mandate of the Constitution makes it the duty of the Legislature to put the maximum rate of interest so low that no person will ever loan money at a lower rate than the maximum established by law? No such construction I think will be contended for. If the Legislature, for the purpose of enforcing punctuality in all payments and suppressing litigation, were to declare that the permanent statutory rate of interest should be ten per cent. unless the parties should contract that it should be less, could it be said with any support of reason that the rate established by such law would not be equal and uniform throughout the State? I think not. If the Legislature were to pass such a law, the matter would be open to contract under ten per cent., and there would be a total absence of uniformity in the contracts of the citizens. The Constitution has not declared that the established rate should be high or should be low; it may be six, twelve or twenty-four per cent. All persons who take the pains to inform themselves, know that in every State in the Union, and in every country in Europe where usury laws exist, there is a statutory rate and a market rate; and that in the various countries of Europe

the market rate or the exchangeable value of money is sometimes above the statutory value and sometimes below it. If the Legislature should establish the permanent rate at 12 per cent. in the absence of express contract, and competition in the loan market should reduce the market rate below the statutory rate, it cannot be maintained that the rate so established would not be equal and uniform throughout the State.

Notwithstanding the dockets of every court in the State would exhibit judgments on special contracts for interest differing in amounts, there would nevertheless be equality of right and uniformity of law. If it then be clear that the Legislature may establish the rate at six, twelve or twenty-four per cent., and leave the adjustment of interest open to contract below the rate so established, it strikes me that it is equally clear that the Legislature can declare six per cent. to be the lawful rate in all cases where there is no adjustment by the parties, and leave it open to contract under ten per cent. The rights of all the citizens of the State under this law are equal. The declaration that the citizens shall have power to make contracts in regard to interest not exceeding 10 per cent. is not the establishment of another rate at variance with the established rate—it merely leaves the citizens free to make their own contracts under that sum, and there is equality of right. I therefore insist that whilst the Legislature is bound by this mandatory provision of the Constitution to establish a rate of interest equal and uniform throughout the State, the words of the instrument do not compel the Legislature to declare that all contracts at variance with this rate shall be invalid, but that the Legislature is delinquent in no constitutional duty if they leave the citizens of the State free to make their own contracts in regard to hire of money, as they do in regard to the hire of slaves, or the rent of real estate.

But if there were a doubt of the operating force of the words of the Constitution, it must always be borne in mind that all power is declared to be inherent in the people, and all legislative power is declared to be in the Legislature, “dependent on the people;” and that prohibitions on the powers of State Legislatures must, in doubtful cases, be construed in favor of Legislative power, and of the reserved rights of the people.

EXCHANGEABLE VALUE OF MONEY.

The restriction on the natural right of men to give what their judgments may dictate for the use of money, as in case of the hire of labor or slaves, or the rent of real estate, is based on the idea that money has a fixed and unchanging value, and that its value in the State of Tennessee has been ascertained to be six dollars for the use of one hundred dollars for one year. It is therefore declared by law, that any citizen who exacts more is guilty of extortion, and should be punished and made to refund the excess.

What argument may be used to support this position? It may be insisted that a currency consisting of the precious metals is of the same value in every part of the United States, and every country of the commercial world; that a dollar in gold or silver, put in circulation, will pass current for that amount fifty years hence, perhaps one hundred, in the purchase of commodities, without diminution in value. That life annuities, payable in dollars, may be adjusted by payment of coin after the lapse of fifty years, without loss to the annuitant; that silver in the last two hundred years has exhibited no disturbing change in value, and that, notwithstanding the large increase of it upon the discovery of American mines, its depreciation was so slight as to cause the expression of conflicting opinions by such men as Smith, Say, and Mill, as to whether its exchangeable value had declined at all; that the successful working of the Australian and Californian mines has no disturbing effect on the commerce of the world, or caused any essential depreciation of the exchangeable value of the precious metals. And that all the depreciation occurring, has been so gradual as not to alter the standard of value, or jostle justice in the specific execution of contracts; that its very great value in small bulk secures its cheap and rapid distribution to every country of the commercial world, according to the productive industry of each; that there has, therefore, never been, and never can be any glut in the market, or serious depreciation or change in the value of gold. That the issuance of fifty millions annually from our mints, whilst our whole paper circulation may not be over two hundred millions, does not make any sensible impression on prices, or seriously effect the exchangeable value of the precious metals, because the ordinary annual supply of the whole world does not exceed one hundredth part of the stock on hand, whilst the annual supply of agricultural products always exceeds, and that of manufactures often equals the stock on hand. That, therefore, there can be no depreciation in the value of a currency consisting of the precious metals, and that the value of such a currency has been correctly estimated by the statute, at six dollars per hundred; that the disease lies in the fluctuations of a credit currency, and the remedy is not in the repeal of the usury laws, but in the establishment of a sound currency.

Admitting the fact stated as to the stability of a currency consisting of the precious metals, I will prove the fallacy of the conclusion deduced therefrom by citations from standard authorities.

Mr. SAY says: "Money is not desired as an object of food, of household use, or of personal covering, but for the purpose of resale, as it were, and re-exchange for some object of utility; it passes through the hands without sensible injury or diminution, and is not, therefore, an object of consumption. * * * * *

"The whole population, from the lowest degree of poverty to the highest degree of wealth must buy the objects of want, and in this sense be the consumers of money."

"Money is an item of wealth, a commodity, the value of which is determined by the same general rules as that of all other commodities, that is to say, it rises and falls in proportion to the relative demand and supply." I will now illustrate the same idea by the more full and explicit language of Mr. MILL: "The value of money is what it will exchange for—it is its purchasing power; if prices are low, money will buy much of other things, and is of high value; if prices are high, it will buy little of other things, and is of low value. The value of money is inversely as general prices, falling as they rise, and rising as they fall."

"The value or purchasing power of money depends on demand and supply. The supply of an article means the quantity offered for sale. It is not usual to speak of offering money for sale. In point of fact, however, money is bought and sold like other articles; whoever sells corn, cotton, or tallow buys money; whoever buys bread, or wine, or clothes, sells money to the dealer in those articles. The supply of money is all that people want to lay out. The supply of money is all the money in circulation at the time. * * * The demand for money consists of all the commodities offered for sale; every seller of goods is a buyer of money, and the goods offered constitute his demand; the demand and supply of goods and the demand and supply of money are equivalent expressions."

Now, what, according to the declaration of this able and lucid writer, constitutes demand and supply, in what he calls the money market? He says: "The disposable fund represented by bank notes, or deposited in banks, together with the funds belonging to men who, either from necessity or preference, live on the interest of their money, constitute the general loan fund of the country, and the aggregate amount of the fund, when set against the habitual demands of producers and traders, determine the permanent or average rate of interest which must always be such as to adjust those two amounts to one another."

"Demand and supply have no different meaning or effect in this case, from what they have in regard to all other commodities. The rate of interest will be such as to equalize the demand for loans, with the supply of them. If more money is offered than is demanded, interest will fall; if more is demanded than is offered, it will rise, and in each case it will rise or fall to the point at which the equation of demand and supply is established.

But the demand and supply of loans fluctuate more incessantly than any other demand or supply whatever. Because, whilst the fluctuation in the demand and supply of other commodities depend on a limited number of circumstances; the desire to borrow, and the willingness to lend, are more or less influenced by every circumstance which effects the state or prospects of industry or commerce, either generally, or in any one of their branches. The rate of interest is seldom in the great centres of money transactions precisely the same for any two days together, as is shown in the never ceasing

variations in the quoted prices of the funds and other negotiable securities."

I have introduced these declarations from standard authors, because they express my views in the strongest language, and because they add to their reasoning the weight of established authority in this department of science. It appears, then, that even in case of a currency exclusively metallic, the value of that currency, though incapable of any increase, without the same application of industry and capital that produces all other commodities, that regarded as an instrument of purchase, its exchangeable value is subject to as much fluctuation as that of any other commodity, and is as shifting as the waves of the ocean. This of itself is sufficient in the soundest state of the currency, to demonstrate the absurdity of taking away from the citizens all liberty in making contracts on the subject of its value.

But when it has become the established policy to authorize a paper currency, as in Tennessee, a currency which can be increased with so much facility, it will at times inevitably become excessive, and be followed by extreme scarcity. The fluctuations in the supply will be in the ratio of the looseness of the system, and the necessity for liberty of contracting power to the same extent be demanded. Before the abolition of usury laws in England, that State, in times of money panic and pressure, authorized a relaxation of the usury laws, on short commercial paper. This was done because money was worth more in a crisis, and by offering a higher rate than the statutory rate of five per cent., money which was hoarded was brought into active circulation, and gave relief to the mercantile interest. Mr. MILLS says: "This policy mitigated the severity of commercial convulsions in England." If the circulation were \$8,000,000 in Tennessee, in 1857, and \$4,000,000 in 1859, it is easy to perceive that if the *vacuum* was not filled by circulation from the surrounding States, there would sooner or later be a fall in the price of other commodities, and a rise in the market rate of money. If the money of the community in circulation were put up at auction and sold for the best indorsed notes, it might bring twice or thrice the maximum allowed by law; it is evident, therefore, that if the usury laws were not disregarded, the severity of any commercial crisis would be greatly aggravated; we, however, adhere to the absurd and barbarous policy of punishing men for taking for the use of their property, what it will bring in market overt.

Let me suppose that the entire wheat crop of East Tennessee be destroyed, that corn be then planted in the wheat fields; that a drouth ensues and that the corn crop is diminished one-half, and that by disease and deficiency of food, the hog crop is diminished by one-half. Now, the supply of those articles by which that division of the State procures its annual supply of funds to pay for goods and other articles, is reduced, say \$1,000,000. No Legislature which contemplates the support of a high moral tone in the

public mind, can resort to legislative manœuvres, for the evasion of the punctual fulfilment of contracts. Six per cent. interest on \$1,000,000, to men who have their capital invested in their respective business, would be a most inadequate compensation; these debts ought to be paid. What is the natural, proper, and honest resort of the farmers under such circumstances? It is by the sale of property, which must be sold at a great sacrifice, or it is by a resort to the loan market. A succession of good crops may have made money previously of little comparative value. Those who have their wealth in that form now find it an article of very great value. If it were put up at auction to be sold for well-indorsed promissory notes, due twelve months after date, it might bring in market over 12 or 15, or even 25 per cent. Some of those who have lost their crops, have the debts of former years upon them, contracted for the purchase of land, slaves, farm, stock, agricultural implements, and store goods. Neither the land, slaves, or the agricultural implements, sold at public sale, can be replaced at 25 per cent., yet, if he, to save the breaking up his farm operations, finds it to his interest to give, and does give 25 per cent. for a loan of money, some will consider him the victim of exorbitant and scandalous usury. A portion of the farmers have made fine crops of corn, and their hogs being well fed and free from disease, they find themselves with an abundance of corn and bacon, while almost the whole country is destitute of these articles. Could it be called any "usury of victuals," in the language of Moses, if these fortunate farmers were to sell their corn and bacon at the price they would bring in market overt?

If the sugar crop of Louisiana is destroyed, if the cotton crop of Mississippi, or the tobacco crop of Kentucky fail, money instantly rises in value in those States, because there is not the usual supply of money, and the community thus overtaken by blighted crops, must resort to the loan market to supply their necessities. Ninety day loans would not aid them.

On the other hand where there is a succession of good crops, with high prices and no speculative demand, money has fallen down to the statutory maximum of 6 per cent. in some of the States. Such has been the competition in the loan market in England, at different times, that it has been no uncommon occurrence for the market value of money to fall below the statutory maximum of 5 per cent. and to remain so for considerable periods of time. The same thing has been of no unfrequent occurrence in France and other European countries at different times. The market value of money has been always lower in Holland than in any other country in the world; though that state never had at any time any laws whatever upon the subject of usury.

Wars, by their abstraction of large sums from productive industry, reduce the supply remaining in the country. The wars of William and Mary to maintain the Protestant ascendancy on some parts of the Continent completely exhausted England of its

currency. There was not money left in England for the smallest purposes; it consequently rose in value enormously, and the heaviest interest was given for it not only in England, but in other countries to be brought to England.

The Crimean war caused the transportation of large sums of money from England and France to the scene of war, it raised the value of money in both countries, and the demand for money in England drew capital from the business in the city of New York, and some merchants of that city memorialized the Legislature of that State to authorize a higher rate of interest than the statutory rate of 7 per cent. with a view to retain its capital against European bids.

The increase in the value of money in this country having generally arisen from disastrous causes, such as failures in the crops, and reductions in the amount of paper currency, and other causes of a similar character has produced the delusion in the public mind that a high rate of interest was always a proof of declining prosperity and a distressed state of the people. But, on the contrary a permanently high rate is an evidence of a progressive and prosperous country; nothing is better settled in the judgment of the ablest writers on political economy, than that the permanent market value of money in a series of years, is mainly fixed in every country by the profit which can be made by the use of it, when invested in agriculture, in manufactures and in trade. This has been regarded as an acknowledged truth since it was first advanced by David Hume, in the last century; it is on this basis of profitable investment that the value of money is different at different times in the same countries, and different at the same place in different branches of business.

Mr. McCulloch says, "It is evident that the rate of interest afforded for the use of borrowed capital, must be proportioned to the profits that might be derived from its employment. In the United States the market rate for money varies from ten to fourteen per cent. Previous to the invasion of Holland by the French in 1794, the rate of interest did not exceed two or three per cent in that State. The immense extent of fertile and uncultivated land in America, the lowness of taxation, and the absence of all restrictive regulations naturally occasioned high profits, and consequently a high rate of interest, whilst the sterility of the soil of Holland, and its limited extent, the excessive load of taxes, and the injudicious restraints imposed on trade by rendering it impossible to derive large returns from capital, proportionally sink the rate of interest. Had the soil of Holland been as fertile and as abundant as that of America, and taxation as light, notwithstanding the abundant supply of capital, profits and interest would have been as high in one republic as the other."

Again he says: "The rate of profit and the rate of interest are evidently twice as high in the United States as in Great Britain

and France. The borrower who pays in the United States ten or twelve per. cent. makes a more profitable bargain than the English borrower who can pay four or five per cent. Whenever money may be borrowed and invested in agriculture, manufactures, in trade, or in the construction of houses, roads, &c., at a high rate of profit, the borrower can afford to pay a rate of interest proportioned to his profits, and the most numerous and most valuable portion of the community, the laborers, are employed and paid in the same proportion."

A high rate of interest, therefore, prevailing over an entire country, and through a series of years, is incontrovertible proof of a high rate of profit, in the various branches of industry, and that the community in the aggregate is neither declining or stationary, but advancing in wealth and general prosperity.

It is upon this view of the relative position of profits and interest, that the Parliament of Great Britain, before the repeal of her usury laws, sanctioned loans of money in Great Britain, to be used by British subjects in the East Indies, at twelve per cent., and in the West Indies at nine per cent., whilst the statutory rate of interest in the United Kingdom was five per cent. The profits of capital employed in those tropical countries was very great. This arose from cheap and fertile soil, light taxation, and climate maturing by heat and moisture its rich fruits without much labor. The English maximum of five per cent. was, therefore, relaxed to nine per cent. in the West Indies, and twelve in the East, so as to induce loans to producers in the colonies. So it might be shown that in each country the rate of profits depends on soil, climate, taxation, security of life, liberty and property, and the enforcement of contracts, and that by necessary sequence the rate of interest will exactly correspond. Money is worth more in the aggregate in Cuba than in Canada; it is worth more in California than it is in North Carolina and Virginia. There are more avenues for immediate and profitable investment; there are more bidders for the disposable capital, and a greater demand and higher rate of interest in the Pacific States than in the others. Money is worth more in Arkansas and the North-western States than in the Atlantic States, in consequence of the wider fields for profitable investment, and in consequence of the almost total absence of any loan market. Almost all the citizens make investments of their own money, and superintend its management, and there are scarcely any who live upon the interest of loaned capital. The bidders being numerous, the field for investment great, the local supply of capital amounting to nothing, the rate of interest in such theatres would be considered exorbitant and scandalous usury in older countries. In consequence of this state of things, some eight or ten of the Western States have authorized ten per cent. interest to be taken by special contract, whilst the statutory rate, in the absence of contracts, stands at six per cent.

In the State of Tennessee we find the same causes at work in adjusting the value of money. Money is worth more in Memphis and in the adjacent country than in any other part of the State, because there is a large body of the finest soil in the world, under the direct influence of cheap transportation, in the hands of a free and enterprising people. A restriction of the legal rate of interest to six per cent. is a more serious "draw back" to the people of that region than any other part of the State. So money has been worth less in some parts of East Tennessee in past times than it was in parts of Middle Tennessee, but the intersection of that division of the State by railroads, and the consequent developments of its quarries, mines, agriculture and trade, under the direct influence of cheap and rapid transportation to Southern markets and sea-board cities, has brought up the permanent rate of interest to the general value of money in other parts of the State. There are two class of causes—those which operate in permanently elevating or depressing the value of money, and those which are occasional only, and which may operate with or against the permanent rate. It is, therefore, apparent to the most unthinking, that where a law prevails restricting the rate of interest below the permanent standard of profit, every part is injured, though every section and every individual may not be injured to the same extent. But this is not the end of the diversity of the value of money. Take any one county, and money will be found to be worth more at one season of the year than at another. It will be found to be worth more to men engaged in one employment than another. Seaman, in his work on productive industry, states that money is worth more invested in manufactures and trade than in agriculture, but no general rule can be laid down as applicable to all places or persons engaged in either of these departments of industry. It is worth more in each of these departments of industry in certain exigencies or at some times than at other times, for longer or shorter periods, for greater or less amounts. Can any one say that if a horse, slave or real estate of a farmer be about to be sold at a sacrifice, it may not become and does not become his interest to borrow for a limited time a small per centage on his stock in business, to save such property from sacrifice, when the article cannot be replaced at twenty, thirty or forty per cent., and which must be replaced? It is wholly immaterial whether any of the departments of productive industry do or do not yield in the aggregate, on the whole amount invested, six, eight or ten per cent. The great error upon this subject, from which it seems impossible to dislodge the minds of many persons, is that the government is attempting to inflict upon individuals compulsory loans to the full extent of all their capital invested in business. It is wholly immaterial whether individuals may not be found who have passed their whole lives in each of the departments of industry without the necessity of bor-

rowing one dollar. If there be such individuals, as doubtless there are, they may well say, as did Moses, permit "no usury of money, usury of vituals, or usury of anything that is lent upon usury." But upon what grounds of reason, or of public policy can they invoke the aid of government to step in between lender and borrower, and establish a Procrustean bed upon which all shall lie. On what grounds shall the government undertake to deprive sane adult men of the liberty of contracting for such portions of the disposable capital as their business necessities may demand, by undertaking to attach a fixed and unvarying value to that which may vary in every county in the State every month in the year, and in every employment of man?

"Adam Smith," says Lord McCauley, "has been justly blamed for maintaining, in opposition to all his own principles of free-trade, that the rate of interest ought to be regulated by the State, and he is the more blamable, because long before he was born both Locke and North had taught that it was as absurd to make laws fixing the price of money, as to make laws fixing the price of cutlery or broadcloth;" but he appends as follows: "it ought always to be remembered to Adam Smith's honor, that he was entirely converted by Bentham's defence of usury, and that he acknowledged, with the candor of a true philosopher, that the doctrine laid down in the *Wealth of Nations*, was erroneous."

THE NECESSITY OF GOVERNMENTAL INTERFERENCE FOR THE PROTECTION OF BORROWERS.

It is the peculiar and appropriate province of government to punish crimes and enforce contracts. But the usury laws go a step further; they prohibit the citizens from making such contracts in regard to the compensation for the use of money as their necessities and their judgments may dictate. These laws shackle individual freedom and restrict trade. Men can make such contracts as they choose in regard to the hire of slaves or the rent of real estate. They can dispose of their entire estates by donation, by contract, or by will, if they be sane and adult. But the government has declared by law that no citizen can bind himself to give or receive more than six dollars for the use of one hundred for one year. Why is this discrimination made? The lender of money may lose both principal and interest, for the specific money loaned is not to be returned and cannot be identified; the lender, of real estate or of slaves on hire, can lose only the hire, for they can be identified and are to be returned. Why, then, it is repeated, is the discrimination made? He has as much right to the market rate of profit of one as the others.

The onus of making out a proper case for governmental interference with the liberties of men, lies, says Mr. MILL, on the defenders of legal prohibitions. "*Scarcely any degree of utility, short*

of absolute necessity, will justify restrictions on individual freedom, unless the act prohibited be offensive to the public conscience." The clear voice of all history proves incontestibly that nations are prosperous in the precise proportion that the inhabitants are free from governmental restrictions and intermeddling, and left to dispose of their own estates and to regulate their own conduct in their own way. Every man should be left in the enjoyment of his natural liberty of making such disposition of his property and of giving such a direction to his industry as may appear to him most conducive to his interest, subject to the requirements of truth and justice.

Should the compensation which men shall give for the use of money be an exception to this rule? There is nothing *malum in se*, nothing offensive to the general public conscience in an agreement by which one citizen receives ten dollars for the loan of one hundred for a year. There is nothing in Holy Writ condemning the receipt of compensation for the use of money, for we are told that the servant who buried money instead of depositing it on interest, was condemned as slothful. He received no more for the buried metal than if it still existed in its crude state in the mine, and the Jews were deprived of its use. Here we find enunciated the active vital principle of modern commerce, the great civilizer of mankind. There being nothing then offensive to general public conscience in authorizing individuals to exercise their own judgments in making contracts in regard to the compensation for the use of money, no prohibition should exist except there was the most decided and manifest necessity for it.

I assert that when two men, both of matured and sound minds, meet, and one has one hundred dollars, which he is willing to loan for ten dollars for one year, and the other is willing to give that sum for it to save him from a breach of promise, or from discredit in a bank, or from a law suit; or to save his yoke of oxen from sacrifice at execution sale, both parties feel that the law forbidding the execution of a contract carrying out their wishes, is oppressive and unjust, and ought to be removed from the statute book. They both feel that they are *enslaved* to the extent of the operation of that law. They both feel that they will be subjected to *loss* by this governmental intermeddling, and they accordingly disregard the law. I assert that this law is disregarded, not *in some individual and occasional* instances, as the laws against murder, theft, and housebreaking, or gambling, or other offences violative of the public conscience are, but that it is habitually disregarded throughout the State. I mean that the great body of the loans in the State are made either directly or indirectly at sums over the lawful maximum. I do not believe that a tithe of the money of the State is loaned at six per cent. I do not believe that one money-lender in a hundred, loans money at six per cent. Having no data by which to find the relative amount, I will not undertake to say with any accuracy; but *it is sufficient to say*

that it is habitually disregarded at all times; and everywhere in the State in an overwhelming majority of instances of loan; and that loans at six per cent. are rare and exceptional cases.

It is disregarded by the banks, by the evasive process of discounting bills. In my opinion the whole of the bank-note circulation is an annual charge or mortgage on the annual produce of the State, to an amount exceeding six per cent., if not ten per cent. The law is disregarded by individuals, by the evasive process of making notes for sale in market, and by the evasive process of discounting bills of exchange. It is disregarded in the sale of city, county, State, and railroad bonds, either by sale of them for less than they call for, or by giving a higher price for articles purchased.

And what are all the building and loan associations in the cities, but auctions for the sale of money, ingeniously contrived to evade the usury laws? Is the statute disregarded here because the people of Tennessee are less law-abiding and more reckless than the people of other States and countries are? It is not so. My information is, that in every State in the Union where conventional interest to ten per cent. is not allowed, it is disregarded to the extent demanded by their condition. We receive daily or weekly accounts from the principal cities of the United States, of the price at which money can be obtained, just as we see the accounts of the price of salt and sugar, precisely as if no laws regulating the price of money existed. I state from the highest authorities, that in every State in Europe where usury laws exist, and the market rate is above the maximum statutory rate, such laws are habitually disregarded just as they are here; and have been in all ages, and everywhere.

And why is it disregarded in Tennessee? It is because the disposable money of the State, that is, the amount of money in the hands of persons who do not wish to invest it in their own business, to be managed by themselves, is worth more at the market rate than the statutory maximum allows. It is disregarded because men will not be forced by law to take less for property of any description whatever, than it will bring if put up at auction in market overt. It is because men will disregard the statute whenever they can relieve themselves thereby, or promote their interest by making a greater profit than the maximum the law allows; and because both borrower and lender feel that they commit no immoral act, no sin by making such contracts.

All knowledge of the usurious contract may be confined strictly to the parties to the contract, and if the borrower is treacherous to his promise, and avails himself of his legal right to avoid the excess, his character is injuriously affected, and it is only in cases where there is some fraud or circumvention, or oppression, by scandalous usury or imbecility on the part of the borrower, he avails himself of his legal right, or that the public will justify a resort to the law to avoid the excess; and such cases a Court of Chancery would probably relieve without the aid of the statute, on the ground that the contracts were fraudulent, or hard and unconscientious.

This law, therefore, as it now stands, educates the people to a habitual disregard of all law, and depraves the public mind as to the duty of obedience to all other laws. And well may the moralist, the statesman, and the political economist, ask why such a law should encumber the statute book? If the legislative measures were taken to enforce this law, by giving grand juries inquisitorial powers; by giving informers the amount loaned on convictions of usury, and by imprisonment of the lender on conviction, the law itself would be repealed or modified at the earliest opportunity. If, however, it were continued on the statute book, the courts of the State would probably be occupied the greater part of their time until they had succeeded in expelling a still larger portion of the loanable capital, or driven it into employments unproductive, because unsuited to the education, capacity, and inclination of the owners: it is most fortunate to the State that it is disregarded to the extent that it is. Montesquien attributed much of the barbarism of the earlier ages of modern Europe, to the prohibition of all loans for interest.

And what has the existing prohibition done in Tennessee? There are men having large capital, the accumulations of past life, who prefer to live on the interest of their money, and who will not loan it out at six per cent., yet who will not live in habitual violation of law, and subject themselves to prosecutions humiliating to their pride. The maximum rate of interest being below the ordinary and established rate of money, it is a matter of notoriety that large sums have been driven from each of the divisions of this State to other States, where higher rates of interest were allowed, whilst many men in business here have gone into other States and borrowed a part of their capital at 10 per cent. This expulsion of money from the State narrows the competition of lenders as well as reduces the amount loaned. The law expels from the trade those who would be most content to take a reasonable market rate for their money. Its tendency therefore is to create and establish a permanent monopoly of the money market, in favor of those who are ready to risk the loss of extra interest and encounter without shrinking, the odium of public prosecutions. It degrades in public estimation the business of money-lending. It produces a disposition on the part of a portion of the lenders to defy public opinion, and on the part of others to adopt a stealthy course of action. The habitual violation of this law has a tendency to stamp on the class of men professionally engaged in money-lending, the character of smugglers. They feel themselves let loose from the restraints of the law, because they know that the law does not permit a fair compensation for the use of their money; and thus let loose in the absence of competition, the conduct of some of them is characterized by cunning, duplicity and extortion. Let no man denounce with severity a whole class of men for the excesses of a few, when those excesses are mainly produced by an impolitic and pernicious law.

We are not unfrequently pointed to the estates made by dealers

in money and notes, to show the danger of a relaxation of these laws. Inquiry, however, will satisfy all that these estates have been acquired by the possession of industry, vigilance, and by the practice of the closest economy in personal expenditure; and that the same habits and qualities would have secured the possession of wealth in any other mere business pursuit.

We are told that it is necessary to impose a limit on the rate of interest to protect the community against the Shylocks of the profession; and some seem to imagine that if both borrower and lender are not restrained, multitudes would ruin themselves by borrowing in an open market, where competition had full sway, and that the owners of money would engross the whole property of the country. There never was a grosser underestimate of the capacities of men. Mr. Say says that "Adam Smith was of the opinion that the frugality of the people at large, in their careful attention to their own interest, had more than counteracted the ignorance and profusion of individuals and of the public authorities; and that almost all the nations of Europe had advanced in opulence, and that this could not have been the case unless each one of them had produced more than it had consumed."

The testimony of Mr. McCauley is to the same effect; for he says: "In every human being there is a wish to ameliorate his condition. No ordinary misfortune, no ordinary misgovernment, will do so much to make a nation wretched as the constant progress of physical knowledge, and the constant effort of every man to better his condition will do to make a nation prosperous. It has been often found that profuse expenditures, heavy taxation, absurd commercial restrictions, corrupt tribunals, disastrous wars, seditions, persecutions, conflagrations and inundations have not been able to destroy capital as fast as the exertions of private citizens have been able to create it. It can be easily proved that in our own land the national wealth has been constantly increasing; that it was greater under the Tudors than under the Plantagenets; that it was greater under the Stewarts than under the Tudors; that in spite of battles, sieges and confiscations, it was greater on the day of the Restoration than the day the long Parliament met; that in spite of maladministration, of extravagance, of public bankruptcy, of two costly and unsuccessful wars, of the pestilence and the fire, it was greater on the day of the death of Charles II than on the day of his restoration." And during the eighteenth and nineteenth centuries "it has proceeded with accelerated velocity." And why? Because, says McCauley, "every man has felt entire confidence that the State would protect him in the possession of what he had earned by his diligence and hoarded by his self-denial."

The facts here stated in regard to England are true in reference to every country in Europe down to the present time. Though estates have been entailed, and official power entailed, equality of right and of law subverted, and individuals in almost all of the kingdoms

subject at all times, either directly or indirectly, to be robbed of what had been earned by their diligence, notwithstanding all this, the mass of the people in each of them have made a decided advance in physical comfort, general liberty and aggregate wealth. And all this has been the result of the inextinguishable desire implanted in the bosoms of the higher races of mankind to better their condition. If such has been the result of individual aspiration and capacity, under the most unfavorable circumstances, what may we not expect under the freest government on earth? Where men have been trained to self-government from their earliest years; where men are instructed in their legal rights and duties in the jury-box, and in their political rights in the exercise of the elective franchise; where it has been the settled policy of the government to create a high standard of intelligence and public spirit, and where every circumstance in a new and undeveloped world calls forth all the physical and mental power of every free and sovereign man, shall we not expunge from the face of the statute-book every law based upon his supposed incompetency to make his own contracts?

But it is said the usury laws are necessary to protect the ignorant, the imbecile, the reckless prodigal, against greedy and unscrupulous money dealers. The vast majority of thrifty mechanics, of industrious and frugal farmers, and of sagacious merchants and traders are therefore to be deprived of their natural right to make their own contracts, to prevent a small portion of the whole number from being overreached and ruined, by the unscrupulous portion of money dealers. Let it be recollected that infants are now protected, and Chancery will relieve against all fraudulent overreaching of ignorant and imbecile persons. Let it be recollected, that the limitation of interest to ten per cent., proposed by this bill, confines the range of contracting power within the limits of conscientious action, and then answer to what extent this apprehended fraudulent overreaching may be carried; and answer whether sufficient cause can be found therein to encroach so largely upon the right of the great mass of the people to make their own contracts. I ask, in the language of Mr. McCulloch, "If we should restrict the circulation of money amongst the great body of the people, who would turn it to the best account, for fear some portion of it might fall into the hands of those who would squander it? It is not so much by borrowing money at a high rate of interest, as by contracting debts to merchants, on whose charge there is no check, that persons generally ruin themselves. Mr. Bentham has justly remarked, that so long as a man is looked upon as one that will pay, he can much easier get the goods that he wants than the money to buy them with, though he were content to give twice or thrice the ordinary rate of interest. How ridiculous, then, is it to permit persons to borrow the largest supplies of food, clothing, and other articles at twenty, thirty, or even 100 per cent. interest, (for it is really borrowing,) rather than

permit them to borrow the smallest sum of money at more than five per cent." Where there is one man ruined by loans at exorbitant rates of interest, there might be twenty others in the same community ruined by extravagance in living, or recklessness in trade; the fate of the twenty would pass unnoticed, while the borrower of money, it would be said, was made the victim of his necessities; being a man in doubtful circumstances, he was charged a higher rate of interest than usual. If the owner of money, loaned it to safe and unsafe men at the same rate of interest, "would he not be condemned justly," asks Mr. McCulloch, "as a fool, or a madman. What would be thought of an act of Parliament, to compel the underwriters to insure a gun-powder magazine and salt warehouse on the same terms?"

The great check on the waste of capital by prodigals; on reckless enterprizes in trade; and on every description of investment is, that the rate of interest rises in the ratio of the doubtfulness of the return of principal and interest. The Bank of England raises the rate of interest whenever it desires to check over trading, and correct disordered exchanges.

It is therefore insisted that the sacrifice of the natural rights of the great body of the community to make their own contracts, is met by no compensating advantage to the few, who may so much more readily exhaust their resources by other means, even if the laws could accomplish the results intended; but they do not.

USURY LAWS RAISE THE RATE OF INTEREST.

Usury laws are intended to keep down the rate of interest, but they keep it up. They heap coals of fire, so to speak, on the head of the needy borrower. How is this done? All the capital owned by those who think they are not fairly paid by the lawful rate, who cannot, or will not invest it except on loan, and who will not violate law; all capital so owned is transferred to States where ten per cent. is allowed. It is a known fact that large sums, probably several millions, have been removed from Tennessee to other States; on this ground the loan fund is thus reduced in amount, and the competition amongst lenders narrowed down, the borrower is at the mercy of fewer men, with less capital. The loan fund which remains is loaned in violation of law; when lenders get outside of the boundaries of law, there is no rule to guide their consciences, no limit in *their minds* to the proper extent of their exactions: they feel lawless because they think that the law itself is contrary to the natural rights of themselves and those subjected to the overruling necessities of traffic. Those of them, therefore, that are not well grounded in the principles of morality and justice, by long defiance of public opinion, or by concealed course of action, are in danger of becoming pirates and smugglers, in feeling and character. This is one of the worst effects of these pernicious laws. When money is loaned in violation

of law, by the purchase of a note or otherwise, the lender takes into consideration the danger of losing the excess, the danger of prosecutions, costs, fines, lawyer fees, loss of time, &c. The sum necessary to cover these risks, will be the premium of insurance paid by the borrower; the lender will also be indemnified in a majority of instances, for the danger of exposure. If the Legislature now in session, were to determine that the usury laws should be enforced as other laws are enforced, so as to make the cases of disobedience to this law exceptional only, and should declare that the lender of money at a greater interest than six per cent. should forfeit the principal, a still greater portion of the loanable capital would be removed from the State, some would be hoarded, some wasted in extravagant living, some invested in property or improvement unsuited to the interest or capacity of the owner, and consequently lost to the aggregate wealth of the community, the rate of interest would rise, and debtors and business men be oppressed.

It is confidently asserted that the usury laws diminish circulating capital, paralyze trade, and oppress debtors.

This is the settled result of experience, not alone at this time here in Tennessee, but of all ages and of all countries where commerce has existed, and the constituted authorities have attempted to impose a legal restriction on the value of money.

Mr. SAY, writing in France, in the last century, says: "The severer the penalties inflicted on a violation of the usury laws, and the more rigid their exaction, the higher the rate of interest is sure to rise, for the greater the risk, the greater the premium of insurance does it require to tempt the lender."

Mr. McCULLOCH, writing in England, in 1836, says: "The usury laws generate the very mischief they were intended to suppress; far from diminishing usurious transactions, they multiply them two-fold, and aggravate all the evils they were designed to mitigate. * *

* * * * * The rate of interest is invariably increased, as the laws intended to reduce it become more severe, and diminished as they are relaxed."

If it were necessary, extracts from other standard authorities might be multiplied.

These authors speak the voice of history.

At Athens, interest for money loaned on landed security, varied from twelve to eighteen per cent., whilst that loaned on ships at sea, was thirty per cent., and upwards; this was because both principal and interest were endangered by pirates, who then infested the Mediterranean sea.

At Rome, during the times of the Republic, the rate of interest was enormously high. This was because the patrician creditors were constantly in danger of losing the whole amount loaned, by the number and power of their plebian debtors.

For fifteen hundred years from the Christian era, interest had no

defenders. (*See Kelly.*) During the whole of the middle ages it was regarded as infamous, and abandoned to the Jews. (*See Say, 299.*) In France, the punishment was banishment for the first offense, and death for the second; and though such punishments did not put a stop to loans, the Jews indemnified themselves for the dangers they encountered, by the exaction of sixty and eighty per cent. interest. The early English writers bear testimony to the abhorrence with which it was regarded in England from the times of Alfred, and the severity with which it was punished. No terms of approbrium were too great for the guilty wretches, who had dared to disobey the express commands of God, and to subvert the laws of nature by making that fruitful which was intended not to be fruitful. The offense of usury was regarded as second only to murder, and punished with forfeiture of goods and chattels and disinherison of the heir. The money lending Jew, losing perhaps an eye in England, his ears in France, and a hand severed from his arm in some other kingdom, indemnified himself for robbery, imprisonment and mutilation, by extorting forty, sixty, and 100 per cent. from necessitous borrowers. The law of Moses, forbidding the exaction of interest, had been superceded by the law of the Talmud.

In 1806, Bonaparte assembled the Jews in Grand Sanhedrin, at Paris. In reply to his interrogatory on the subject of usury, they said, "The Mosaic institute forbids unlawful interest. The Talmud allows interest to be taken from brethren and strangers. It forbids usury." But the Christian, repudiating the law as laid down in Luke and Matthew, (*See Bacon, Ab.,*) and professing to judge the Jews by Jewish law, inflicted the most inhuman punishments on them in almost every country in Europe. When, says Millman's History, the hard earnings of the past life of a Jew was swept from him by violence, he reimbursed himself by slow but perpetual reprisals, and took refuge in fraud, from violence and injustice. He argued not unfairly that the more precarious, the greater ought to be his gains. It was a war of ferocious and unchristian passions against industry, patience, and avarice." The denunciations in the Church, in the twelfth and thirteenth centuries, against all interest, and the punishment of the offense by forfeiture of the estates of men, gave a deeper shade of barbarism to those ages, yet it did not and could not arrest all loans. The clamor and persecution raised against the money lenders, obliged them to charge much more than the natural price, in order to compensate them for the approbrium and plunder they suffered, and hence the usual rate of interest during the whole of the middle ages, was what we would call exorbitant and scandalous usury. (*See Macpherson on Commerce.*)

The first statute in England, legalizing the taking any interest, was passed in 37 Henry VIII, 1546. It authorized ten per cent to be taken. The statute declared that the total prohibition of interest had "so little force that little or no punishment had ensued to

the offenders." Six years afterwards, all interest was again prohibited. It was declared to be a detestable vice, and contrary to the Word of God. The rate of interest immediately rose to fourteen per cent. in the market, and continued at that until the act of 13th Elizabeth was passed, legalising ten per cent.

The act of Elizabeth stated that the prohibitory act of 6th Edward, had "not done so much good as was hoped for, but that rather the vice of usury had more exceedingly abounded, to the utter undoing of many gentlemen, merchants, occupiers, and others, and to the insupportable hurt of the Commonwealth." It was also declared that the permission to loan was given in opposition to the laws of God, in order to reduce the rate of interest. In the latter part of the last century, in France, money could be obtained at five per cent., on good security, the lawful rate was reduced to four per cent., the market rate rose to six per cent., one per cent being put upon the borrower to indemnify the lender against the consequences of the law. So, in Russia, the legal rate of interest was reduced from six to five per cent., and the market rate then rose to seven per cent.

The cheapness of money in Holland, and the entire absence of all usury laws at all times, together with the increased value of money in times of pressure, induced the British Parliament, in 1818, to appoint a committee to examine and report on the subject of the usury laws in Great Britain. The most able and experienced men in the kingdom testified that the usury laws had uniformly increased the rates of money to men in distress; that it had excluded the highest class of capitalists from the regular business of money lending, and had thrown it into the hands of men who indemnified themselves for violation of law by severe exactions. The committee concurred in these views, and reported favorably to the total abolition of the usury laws. Nothing, however, was done until the year 1833, when commercial paper, not having over three months to run was exempted from the restriction, this law having given satisfaction, commercial paper having twelve months to run, was exempted in 1837, and all usury laws repealed in 1854.

When we see the testimony of centuries thus accumulated, is it not rational and safe to conclude that it is proper to widen the range of contracting power from six to ten per cent., for the use of money. If the light of all experience be not a meteor blazing but to delude, it must be proper and safe to make this trade open to contract, up, at least, to that point where the region of hard and unconscientious bargains would be supposed, generally, to begin. Let the prohibition on the trade in deposits and bills of exchange be also as free as other trades; let all restraining and punitive taxes on all lawful trades be repealed; let them be subject alone to equal, just, and fair taxation, proportioned to business done.

"The most effectual plan," says Adam Smith, "for advancing a people to true greatness, is to maintain that order of things which nature points out, by allowing every man, as long as he observes the

laws of justice, to pursue his own interest in his own way, and to bring his industry and his capital into the freest competition with those of his fellow-citizens."

This will give the community the full benefits of competition. It will bring into the highest activity the disposable capital of the State, and recall that which has been driven out by the restrictions, and it will put the pursuit on the most elevated and honorable footing, as it should be.

But it may be supposed that this internal freedom in trade will reduce the bank note circulation below that point it could otherwise attain.

Now, regarding as I do, the *policy of bank issues as established in this State, as evinced by the continuous action of the Legislature since 1807 to this date*, the question remains, how far can it be safely carried, without attracting capital unduly from productive enterprises. In this view it is asserted that every country attracts, in a series of years, an amount of the precious metal, and maintains in circulation, an amount of money, either metallic or its representative, proportioned to its productive industry, and that the average amount of its circulating medium can be deduced from the average amount of its productive industry, and *vice versa*, that upon this principle, Humboldt, in 1804, calculated the amount of money in circulation in each of the countries of Europe." That the proposition was sustained by the unanimous assurances given by the country bankers in England, before successive Parliamentary committees, that banks issuing a greater amount of notes than is necessary to perform strictly the functions of currency, produces depreciation though they be convertible, and they cannot be kept permanently in circulation and undepreciated; that there cannot be more paper money kept permanently in circulation than there would be of circulation if the currency were exclusively metallic, that the whole gain, according to Mill, McCulloch, and others, would be the substitution of the cheaper instrument for the dearer; that if the currency required "to circulate the products of the land and labor" of the State be eight millions—two millions of gold and six millions of paper, that the gain consists in the use of six millions of gold represented by paper, and not that more of one can be in circulation than of the other; that the issuance of bank notes on sound banking principles, always presupposes the existence of a specific fund in the hands of the borrower, to meet it at sixty or ninety days, as Banks cannot exist on longer loans; that a bank note circulation can therefore furnish to agricultural, manufacturing or commercial enterprises no funds for the construction of ships, or machinery, for the digging of mines or canals, for the improvement of wild lands, in short, any funds to be employed as vested capital." (See *Say*, 225.) That, therefore, paper money performs the functions of circulation and transfer, not of capital, and performs a most subordinate part in the machinery of production, that it is capital alone on long loans, that

can put in operation great industrial enterprises. Say and Smith both declare that the amount of capital in the shape of money, which is necessary, or can be used in that shape, is most insignificant when compared with the gross amount of the national capital, consisting of "accumulated commodities," &c., &c. : and that the amount of capital vested in money is trifling, when compared with other capital in the precise proportion that a nation is industrious and prosperous, that money being unproductive should be transformed into vested capital as soon as possible, leaving only so much as may be necessary for current use.

Smith, Jefferson, and Calhoun, declare that one-thirtieth part of the amount of the annual products of its capital was the minimum sum necessary to circulate its products.

If these propositions have any reasonable foundation in truth, it must be apparant that if money vested in bank stock be given greater advantages and higher profits than unincorporated private capital, such advantages and profits operate as a bonus in favor of short loans, at the expense of long loans, and will reduce unduly the fund, that would otherwise be vested in mining, agriculture, and manufacturing. It will stimulate importation and consumption at the expense of production and exportation.

It must, therefore, have an unceasing tendency to wear down the resources of the country, keep it always in debt by overtrading, and produces alternate excess and deficiency in the amount of the circulating medium.

It is therefore in my judgment all important that private capital should be placed on a fair and equal footing with incorporated capital.

With respect,

W. H. HUMPHREYS.

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